FEDERATION REPORTS.

SAMUEL DANIEL v. LILY DANIEL.

[App. Civ. Juris. (Taylor, J.) October 28, 1950]

[K.L. — Civil Appeal No. 13 of 1950]

Maintenance — Application to confirm provisional maintenance order made in Singapore — Forum conveniens — Reciprocal Enforcement of Maintenance Orders Ordinance (Chapter 47) — Reciprocal Enforcement of Maintenance Orders Enactment (Chapter 4).

In this case an application was made to the Magistrate at Kuala Lumpur to confirm a provisional maintenance order made in Singapore. At the hearing it was requested on behalf of the husband that the proceedings should be remitted to Singapore for further evidence to be taken on the ground that the facts alleged occurred in Singapore and the witnesses resided there. This was refused and the provisional order was confirmed. The husband appealed.

Held, that it was a wrong exercise of discretion to confirm the order without giving the husband an opportunity to prove the facts alleged and therefore the appeal must be allowed.

CIVIL APPEAL.

R. P. S. Rajasooria for the appellant.

Buhagiar (Federal Counsel) for the respondent.

Taylor, J. : — This was an application to the Magistrate at Kuala Lumpur to confirm a provisional maintenance order made in Singapore. At the hearing Counsel for the husband raised one of the statutory defences and requested that the proceedings be remitted to Singapore for further evidence to be taken on the ground that the facts alleged occurred in Singapore and the witnesses resided there. This was refused and the provisional order was confirmed.

It is true that certain technical points were taken and these may have obscured the matter and made unnecessary difficulties, but however that may be, it appears that the husband had followed the correct procedure on the main points.

I am therefore of opinion that it was a wrong exercise of discretion to confirm the order without giving the husband an opportunity to prove the facts alleged.

There was one further point. It appeared very doubtful whether an order under section 11 of the Ordinance establishing reciprocity between the Federation and Singapore had been made and I adjourned the matter for this to be verified. It was at first suggested that this point was covered by the repeal of the Straits Settlements Ordinance, Chapter 47 of the Revised Edition of 1936. I think this argument is completely misconceived. However, after the adjournment, Mr. Buhagiar, a Federal Counsel, argued that the point was covered by the provisions of section 12 as applied to the repealed Enactment, (Chapter 4 of the Revised Edition) of the Federated Malay States. He submitted that the word "territory" is not technical and that Singapore is, in truth, part of the territory mentioned in the repealed enactment. I think this argument is correct and that whatever the position may be in Malacca and Penang, as regards Selangor reciprocity with Singapore survives by operation of law without a further order by the High Commissioner under section 11.

The appeal was therefore allowed and it was ordered that the proceedings be remitted to Singapore so that the facts may be litigated in the more convenient forum.

Appeal allowed.

TENGKU ZAHARA BINTI TENGKU CHIK v. CHE YUSOFF BIN CHE MAT.

[Orig. Civ. Juris. (Briggs, J.) November 29, 1950]

[Kota Bahru — Civil Suit No. 107 of 1950]

Kelantan Land Enactment — Jual Janji Rules — Transaction not a genuine jual janji one but in the nature of a mortgage — Rate of interest — Interest (Usurious Loans) Notification, 1924.

In this case the plaintiff sued for redemption of her land in Kota Bharu. The defendant alleged that there had been a **jual janji** transaction between him and the plaintiff by which in consideration of the sum of $5,160/- the land had been transferred to him. He also alleged that the time for repayment of the amount lent, which was two years under the agreement, had elapsed and therefore the plaintiff had no right to recover the land. The plaintiff in her evidence alleged that the actual sum lent was $3,000/- and that the balance of $2,160/- represented interest for two years at the rate of $90/- a month.

Held, (1) that on the facts the plaintiff's account of the matter must be believed and therefore this was not a regular **jual janji** transfer, but was an irregular transaction in the nature of a mortgage; (2) that the English rules of equity with regard to redemption applied and that this was a case in which redemption must be allowed: and (3) that the interest charged was excessive and should be reduced to $300/- a year or $900/- in all.

Cases referred to :—

(1) *Haji Abdul Rahman v. Md. Hassan* (1917) A.C. 211.

(2) *Yaacob bin Lebai Jusoh v. Hamisah binti Saad* (1950) M.L.J. 255.

ACTION.

R. P. S. Rajasooria for the plaintiff.

C. C. Goh for the defendant.